131-65

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1865.

No. 265.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LEWIS COHN AND MOSES L. COHN, COPARTNERS AS COHN AND SON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 4, 1866.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 285.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LEWIS COHN AND MOSES L. COHN, COPARTNERS AS COHN AND SON.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday, the first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

LOUIS COHN AND MOSES COHN
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-ninth day of November, 1884, came the plaintiffs, by their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe and bond for costs in said above-entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court, northern district of Ills., to the January term, A. D. 1885.

LOUIS COHN AND MOSES L. COHN, COPARTNERS, doing business as Louis Cohn & Son,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit; damages, $500.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises, to the damage of said plaintiffs in the sum of five hundred dollars *dollars*, and direct the same to the marshal of said district to execute and make it returnable to the January term of said court, A. D. 1885.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

To WILLIAM H. BRADLEY, Esq., *Clerk.*

CHICAGO, *November* 28, 1884.

(Endorsed:) Filed Nov. 29, 1884. Wm. H. Bradley, clerk.
23309

3 *Bond.*

UNITED STATES OF AMERICA,
Northern District of Illinois ss:

Circuit court, January term, A. D. 1884.

LOUIS COHN ET AL
vs.
JESSE SPALDING, COLLECTOR, &C. } In Assu'psit.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against the plaintiffs.

Dated this 29th day of November, A. D. 1884.

SHUMAN & DEFREES.

(Endorsed:) Filed Nov. 29 A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit: on the twenty-ninth day of November, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

4 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector, &c., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto Louis Cohn and Moses L. Cohn, copartners, doing business as Louis Cohn & Son, of a plea of trespass on the case upon promises, to their damage as it is alleged of five hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 29th day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, therein named, on the 1st day of December, 1884.

5 A. M. JONES.
U. S. Marshal.
By R. D. SHERMAN,
Deputy.

(Endorsed:) Filed Dec. 6, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the first day of December, 1884, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the December term, 1884.

Louis Cohn and Moses Cohn, copartners, doing business under the firm name and style of Louis Cohn & Son, plaintiffs in this suit (which is a suit arising under the revenue laws of the United States and is brought to recover duties claimed by the plaintiff' to have been illegally exacted of them, and by them paid under protest), by Shuman & Defrees, their attorneys, complain of Jesse Spalding, collector of customs for
6 the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiffs, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and eighty-four, at, to wit, the northern district of Illinois, made payment to the said defendant, collector, as aforesaid, of a certain large sum of money, to wit, the sum of three hundred and thirty-five dollars and fifty cents, lawful money of the United States, as duties, under protest, and in order to obtain possession of certain scrap tobacco, merchandise imported into the United States for them, the said plaintiffs, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant, as such collector; and the said plaintiffs aver that sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant, collector, illegally demanded and exacted of and from the said plaintiffs.

And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs, they, the said plaintiffs, being dis-
7 satisfied with the decisions of the said collector, gave notice, in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of their the said plaintiffs' objections thereto; and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiffs appealed to the Secretary of the Treasury of the United States. And the said plaintiffs aver that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of three hundred and thirty-five dollars and

fifty cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiffs as aforesaid, and being so liable the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was in-
8 debted to the said plaintiffs in the further sum of five hundred dollars, like lawful money as aforesaid, for money by the said defendant, before that time had and received to and for the use of the said plaintiffs, and being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto wholly neglected and refused and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of five hundred dollars, and therefore the said plaintiffs bring their suit, &c.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

(Endorsed:) Filed Dec. 1, 1884. Wm. H. Bradley, clerk.

9 Afterwards, to wit, on the thirty-first day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

Cir. c't of U. S., no. dist. of Ills.

LOUIS COHN ET AL.
vs.
JESSE SPALDING, COL'R, &C.

The defendant's appearance is hereby entered by his att'y.

RICHARD S. TUTHILL,
U. S. Att'y.

(Endorsed:) Filed Dec. 31, 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the thirty-first day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea

in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois. December term, 1884.

10 JESSE SPALDING, COLLECTOR, &c., a'ts LOUIS COHN ET AL. } Assumpsit.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form, as the said plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney, for Defendant.

(Endorsed:) Filed Dec. 31, 1884. Wm. H. Bradley, clerk.

11 Afterwards, to wit, on the eleventh day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LOUIS COHN ET AL. vs. JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

Now come again the plaintiffs, by their attorneys, and the defendant, by the district attorney, and after hearing the concluding evidence and the arguments of counsel the court takes the same under advisement.

12 Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

U. S. circuit court, northern district of Illinois.

COHN ET AL. vs. SPALDING, COL'R, &C. }

The court, upon the proofs, find the facts to be as follows:

The goods in question are known to the trade as "scrap tobacco," being composed of fragments or pieces broken or cut off in the manufacture of

cigars, and scraps from the tables of the cigar-rollers, and that before they can be put into form for consumption they have to undergo another process; that they are used as filling for cheap cigars or worked into some kinds of smoking tobacco or into cigarettes, and therefore it should be treated for the purposes of duty as "unmanufactured tobacco." The goods were entered and claimed as "unmanufactured or scrap tobacco." The def't classified them as manufactured tobacco, and assessed a duty thereon at 40 cents per pound.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

13 On the same day, to wit, on the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

LOUIS COHN AND MOSES COHN
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now come the parties by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiffs, and assesses their damages at three hundred and thirty-five dollars and fifty cents, with interest and costs.

It is thereupon considered and adjudged by the court that the plaintiffs do have and recover of the defendant the said sum of three hundred and thirty-five dollars and fifty cents, their damages, with interest thereon from the time the same was paid to the defendant, together with their costs in this behalf, amounting to twenty-three dollars and forty-six cents, and that they have execution therefor.

14 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LOUIS COHN AND MOSES COHN
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant as complained herein.

15 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above

and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Louis Cohn and Moses L. Cohn are the plaintiffs and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this thirteenth day of February, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

16 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America.

To the judges of the circuit court of the United States, for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between Louis Cohn and Moses L. Cohn, copartners, &c., plaintiffs, and Jesse Spalding, collector of customs, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States, Jesse Spalding collector of customs, &c., plaintiff in error vs. Louis Cohn, et al, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

17 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To Louis Cohn & Moses Cohn, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second

Monday of October, A. D. 18 —, pursuant to a writ of error filed in the in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Jesse Spalding is plaintiff in error, to show cause, if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, judge presiding in the circuit court, this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) 19341. Supreme Court of the United States. Jesse Spalding vs. Louis Cohn, et al., citation to October term A. D. 1886.

(Indorsement on cover:) No. 285. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Lewis Cohn and Moses L. Cohn, copartners as Cohn & Son. N. Illinois, C. C. U. S. Filed June 8, 1886.

FILED
APR 23 1889
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR, ETC., plaintiff in error,
vs.
LEWIS COHN AND MOSES L. COHN, copartners as Cohn & Son.
} No. 285.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR, ETC., plaintiff in error,
vs.
LEWIS COHN AND MOSES L. COHN, copartners as Cohn & Son.
} No. 285.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

This is an action to recover a sum of money which represents an illegal excess in the exaction of duty on an importation of what is known to the trade as "*scrap tobacco*," "being composed,"

as the court found, "of fragments or pieces broken or cut off in the manufacture of cigars and scraps from the tables of the cigar-rollers" (pp. 5, 6). It was also found that these scraps "are used as filling for cheap cigars or worked into some kinds of smoking tobacco or into cigarettes."

The goods were entered and claimed as "*unmanufactured or scrap tobacco*," dutiable at 35 cents per pound under Schedule F of the act of 1883 (22 Stat., 503), but the collector classified them as *manufactured tobacco*, and assessed a duty thereon of 40 cents per pound (*ib.*, 503).

The court held that the goods should be classified as unmanufactured tobacco, and, accordingly, entered judgment for the difference between the two rates of duty (p. 6).

ASSIGNMENT OF ERROR.

The judgment of the court below was erroneous, the assessment of duty by the collector being in conformity to the law.

ARGUMENT.

The construction put upon the law by the collector is necessary to harmonize the customs laws with the internal-revenue law, the two systems being *in pari materia.*

The whole subject is so fully presented in the following rulings of the Treasury Department that further discussion is unnecessary:

TOBACCO CLIPPINGS AND CUTTINGS—CLASSIFICATION OF.

TREASURY DEPARTMENT, *November* 2, 1875.

SIR: On the 21st of May, 1870, the Department decided by letter of that date, addressed to the collector of customs at Philadelphia, that scrap tobacco, otherwise known as tobacco clippings and cuttings, was dutiable under the provision of section 6, act March 2, 1861, for "unmanufactured tobacco," at the rate of *thirty per cent. ad valorem.*

This decision remained undisturbed and unquestioned until recently, when it was charged that such ruling was inconsistent with that of the Commissioner of Internal Revenue, that officer holding that all such tobacco is to be considered as manufactured tobacco, within the meaning of the internal-revenue law.

As the law applied the same internal-revenue tax to imported as to domestic manufactured tobacco, the effect of the two decisions, taken together, was, that the article in question was assessed for duty under the tariff act of 1861 as unmanufactured tobacco, while it was taxed under the internal-revenue law of 1868 as manufactured tobacco.

It may be proper to add in this connection that the reason why this subject was not agitated at an earlier day is, probably, because importations of this description of tobacco have not, until a comparatively recent date, been made to any considerable extent.

It remains to be considered whether these decisions shall both stand, or whether a uniformity of ruling should be established, recognizing such tobacco, either as manufactured or unmanufactured, for all revenue purposes.

The ruling of the Commissioner of Internal Revenue was based upon the fact that the internal-revenue law (act July

20, 1868, section 62) defines scraps, clippings, cuttings, and sweepings of tobacco to be manufactured tobacco. Such definition necessarily makes the tobacco in question subject to tax as manufactured tobacco, irrespective of the question whether it is commercially known as such or not.

The tariff act of 1861, under which it was decided that tobacco scraps were dutiable as unmanufactured tobacco, did not define what should be considered manufactured and what unmanufactured tobacco. This question was one of construction, to be determined by the commercial meaning of such terms, or from other sources of information outside of the act itself.

All the above provisions of law are found in the Revised Statutes, and the question now to be determined is, whether the Department's said decision of May 21, 1870, shall or shall not prevail.

Upon a further review of the subject, I have to state that, while the Department sees no reason to change the view heretofore entertained, that tobacco scraps, clippings, or cuttings are not commercially known and recognized as manufactured tobacco, it nevertheless feels constrained, in determining what shall be its classification for the assessment of customs duties, to adopt the definition of the statute, classifying such tobacco as a manufactured article for the purposes of the internal-revenue law, the several provisions of law relating to the collection of internal revenue and of import duties being necessarily construed as *in pari materia*.

In view of the premises, therefore, the Department holds that imported tobacco scraps, including cuttings and clippings, are subject to duty under the provision of Schedule J, Title 33, of the Revised Statutes, for manufactured tobacco, at the rate of 50 cents per pound, and you will govern your action accordingly.

I am, very respectfully,

B. H. BRISTOW,
Secretary.

Collector of Customs, New York.

SCRAP TOBACCO—DUTIABLE AS MANUFACTURED.

TREASURY DEPARTMENT, *January* 31, 1884.

SIR: The Department duly received your letter of the 4th of August last, transmitting the appeal (7316 *h*) of Straiton & Storm from your decision assessing duty at the rate of 50 cents per pound on certain tobacco scraps imported, per *Saratoga*, May 15, 1883, which the appellants claim to be dutiable at the rate of 30 per cent. ad valorem, under the provision in Schedule

J (T. I., old, 211) for "unmanufactured tobacco, not otherwise provided for."

The merchandise was classified as "tobacco, unmanufactured," under (T. I., old, 209) Department's ruling of November 2, 1875 (Synopsis, 2486), at a duty of 50 cents per pound, but in view of subsequent legislation (act of March 1, 1879), the appellants urge that tobacco scraps should be classified as *unmanufactured* tobacco.

The case was submitted to the United States Attorney-General, under the provisions of the act of March 3, 1875 (18 Stats. at Large, 469), for his views on the question now presented, and the following is a copy of the opinion of that officer, dated the 25th instant:

"Your communication, touching the rates of duty on imported scrap tobacco, has received my consideration.

"Schedule J, Title 33, of the Revised Statutes, imposes a duty of 50 cents a pound on manufactured tobacco, and a duty of 30 per cent. ad valorem on unmanufactured tobacco. By the act of the 3d of March, 1883, the same classification is preserved, but the duty on manufactured tobacco is reduced to 40 cents a pound (22 Stats., p. 503). The question is, under which classification does scrap tobacco come?

"By section 61 of the act of 20th July, 1868, entitled 'An act imposing taxes on distilled spirits and tobacco, and for other purposes' (15 Stats., 125), 'refuse scraps and sweepings of tobacco' are classed as manufactured tobacco.

"Taking these acts together, they being clearly *in pari materia*, we must place scrap tobacco in the category of manufactured tobacco, irrespective of what its mercantile acceptation may be, for Congress has given it that classification, and I am informed that the Treasury Department has adopted and been acting in accordance with that view.

"It appears, however, that since the passage of the act of March 1, 1879, exempting from the internal-revenue tax imported scrap tobacco on which the proper customs duty has been paid, a question has arisen whether the interpretation of the provisions of the tariff now under consideration should be controlled any longer by the internal-revenue law.

"I see no reason why the act of March, 1879, should produce any such result. The classification in the internal-revenue law of scrap tobacco as manufactured tobacco still exists in respect of domestic tobacco of that kind. But even if there was a total repeal of the tax on scrap tobacco, the repealed law might still be referred to for the purpose of ascertaining the intention of Congress, it being entirely well settled that all statutes *in pari materia*, whether repealed or not, should be taken into view in resolving a doubt as to the meaning of any one of them.

"My opinion is, therefore, that scrap tobacco is still dutiable as manufactured tobacco."

Under the views thus expressed, the merchandise was properly classified as manufactured tobacco, and your decision in the premises is hereby affirmed. Tobacco scraps imported since the 1st of July last are dutiable at the rate of 40 cents per pound, under Schedule F, act of March 3, 1883 (T. I., new, 249).

Very respectfully,

H. F. FRENCH,
Assistant Secretary.

Collector of Customs, New York.

It is submitted that the judgment should be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

COHN AND OTHERS *v.* SPALDING.

(*Circuit Court, N. D. Illinois.* May 26, 1885.)

CUSTOMS DUTIES—UNMANUFACTURED TOBACCO.

Certain tobacco, known to the trade as "scrap tobacco," composed of fragments or pieces broken or cut off in the manufacture of cigars, *held* to be dutiable as unmanufactured tobacco.

At law.

Percy L. Shuman and *Jo. H. Defrees, jr.*, for plaintiff.

Chester M. Dawes, assistant United States attorney, for defendant.

BLODGETT, J. (*orally*). The plaintiff in this case imported a lot of tobacco and entered it as "unmanufactured or scrap tobacco." It was classed by the appraisers as manufactured tobacco, and assessed at a duty of 40 cents per pound. Heyl, pt. 2, p. 15, cl. 249. The only question in the case is whether this is manufactured or unmanufactured tobacco. The proof in the case shows that it is known to the trade as "scrap tobacco," being composed of fragments or pieces broken or cut off in the manufacture of cigars, and scraps from the tables of the cigar rollers, and that it has yet to undergo some process by which it can be put into form for consumption. The proof in the case shows that it is used either as filling for cheap cigars, or worked into some kind of smoking tobacco, or into cigarettes; and therefore it should be treated, for the purposes of duty, as "unmanufact-

ured tobacco." It was contended at the trial that this tobacco came within the provisions of clause 249 as "stemmed tobacco," but I am of opinion that this designation is used to describe leaf tobacco from which the stems had been removed, and not these sweepings of a cigar factory.

The issue is therefore found for the plaintiff.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 285.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LEWIS COHN AND MOSES L. COHN, COPARTNERS AS COHN & SON, DEFENDANTS IN ERROR.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

BRIEF OF ARGUMENT.

The defendants in error, on or about the first of November, 1884, imported at Chicago, Illinois, a quantity of scrap tobacco, which they entered at the custom-house as "un-

manufactured or scrap tobacco, not specially enumerated or provided for," at the rate of 30 per centum ad valorem (act March 3, 1883, Schedule F, clause 251). The collector classified the tobacco as "manufactured tobacco," under clause 249 of the same schedule (act March 3, 1883), and assessed the duty at the rate of 40 cents per pound. The defendants in error paid the duty so assessed, under protest, and appealed to the Secretary of the Treasury, as required by law (sec. 2931, Rev. Statutes U. S.), and brought suit within ninety days after the Secretary's decision to recover the excess of duties, amounting to three hundred and thirty-five dollars and fifty cents.

A trial was had before Blodgett, J., without a jury, a jury having been waived, and the court rendered a special finding (Rec., pp. 5 and 6); also a general finding and judgment for the plaintiff.

By the terms of the special finding, that "the goods in question are fragments or pieces broken or cut off in the manufacture of cigars and scraps from the tables of the cigar-rollers," it is made clear that the issue was whether the tobacco was or was not "manufactured," because the finding proceeds to say "that before they can be put into form for consumption they have to undergo another process."

There is a clause of Schedule "F" providing a duty of thirty-five cents per pound upon "all other tobacco in leaf, unmanufactured and not stemmed" (par. 247). This is the only clause providing for unmanufactured tobacco, except paragraph 251.

The special finding shows clearly that this tobacco does not fall within the provisions of the above paragraph.

The only other paragraph in the law under which the goods

in question, as defined by the special finding, could be properly classified for duty is paragraph 251 of Schedule "F," for "tobacco, unmanufactured, not specially enumerated or provided for," at 30 per centum *ad valorem*.

Under this finding the judgment was manifestly correct, and we respectfully submit that it should be affirmed.

PERCY L. SHUMAN,
For Defendants in Error.